DOCKET FILE COPY ORIGINAL

WILLKIE FARR & GALLAGHER

EX PARTE OR LATE FILED

Washington, DC
New York
London
Paris

January 9, 1998

Secretary Magalie Roman Salas
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20054

Re: Ex Parte Submission in CC Docket Nos. 96-149, 97-11, 97-231 and CCBPol 97-9.

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(1) of the Commission's rules, Sprint Communications Company L.P. hereby submits the attached written presentation for inclusion in the record in the following proceedings: <u>Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area</u>, CC Docket No. 96-149; <u>Implementation of Section 402(b)(2)(A)</u>, CC Docket No. 97-11; <u>Application of BellSouth Pursuant to Section 271 To Provide In-Region InterLATA Services in Louisiana</u>, CC Docket No. 97-231; <u>Common Carrier Bureau Request For Recommendations Critical To The Promotion of Efficient Local Exchange Competition</u>, CCBPol 97-9. Enclosed for filing are eight copies of this letter and the written presentation, two copies for each of the four proceedings.

Sincerely,

Thomas Jones
Counsel for Sprint
Communications Company L.P.

cc: Carol Mattey
Melissa Newman
Craig Brown
Andrea Kearney

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384
202 328 8000

Telex: RCA 229800
WU 89-2762
Fax: 202 887 8979

Sprint Communications Company L.P. has requested a legal analysis of the public suggestions that, in the wake of the Texas court's ruling striking down Sections 271-275, SBC Communications Inc. et al. v. FCC et al., Civ. Action No. 7-97CV-163-X, slip op. (N.D. Tex. Dec. 31,1997) ("SBC v. FCC"), SBC and U S WEST could proceed immediately to provide interLATA service within their regions. This paper explains why no BOC could so proceed without further action by the FCC, even in the unlikely absence of a stay of the decision. Specifically, the statutory authority and obligations assigned by Congress to the FCC under Section 214 and Section 251(g) require that any BOC seek specific FCC authorization prior to offering service. As explained herein, these provisions still permit -- indeed require -- the FCC to consider the public interest effects of BOC entry, especially in the wake of a district court's invalidation of the findings and policies of Congress.

1. Section 251(g) Preserves the MFJ's Restrictions As FCC Regulations Until the FCC Acts Otherwise.

The treatment of the AT&T Consent Decree[1] in the Telecommunications Act of 1996 is comprehensive. Congress deliberately and carefully acted to displace the decree with its own pronouncements of telecommunications policy. Under Section

---

1 United States v. AT&T, 552 F.Supp 131 (1982), *aff'd. sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

601(a),[2] Congress chose not to try to invalidate the judgment itself but simply to remove the court's ability to continue "any restriction or obligation" imposed by the decree. In lieu of the decree's restrictions and obligations, any such activity became "subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act...." Thus, the FCC as Congress' agent became the jurisdictional authority over the "conduct and activity" once subject to the decree. See California v. FCC, 124 F.3d 934 (8th Cir. 1997)(*dicta*).

The various provisions of the decree were incorporated with modifications in various sections throughout the new Act. All of these provisions became the FCC's responsibility to administer and enforce. Of course, the so-called "special provisions" of Title II, the sections under attack by SBC, largely grew out of the MFJ. Other provisions also were enacted, however, wholly outside of SBC's constitutional challenge and the court's decision. Section 251(g) specifically provides that the decree's restrictions (as well as legal mandates from other sources) would remain in effect until the FCC acted to administer the new law. The section states:

---

2 The subsection reads:

> Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the AT&T Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

> On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment.

The statutory reference to the "equal access and nondiscriminatory interconnection restrictions and obligations" preserves the various obligations applicable to each local exchange carrier as they applied prior to the Act. Thus, the section ensures that passage of the Telecommunications Act of 1996 along with its new directions for national policies would not inadvertently leave competitors or customers without protection in any interim period before the FCC could act. Further, the reference to the restrictions and obligations "under any court order [or] consent decree" plainly incorporates, among other things, the provisions of Section II of the Modification of Final Judgment, the section entitled "BOC Requirements." 552 F.Supp. at 227. This section contains the equal access, nondiscrimination and line-of-business restrictions of the decree. See Petition for Declaratory Ruling Regarding US West Petitions to Consolidate LATAs in Minnesota and Arizona, 12 FCC Rcd 4738, 4748 (CCB 1997) (explaining that 251(g) gives the FCC exclusive authority to determine LATA boundaries, since LATA boundary definition or modification "is an essential component of the Commission's authority to enforce the equal access and interconnection restrictions established under the AT&T Consent Decree").[3]

Moreover, Section 251(g) makes absolutely clear that the preserved restrictions and obligations are to be considered the legal equivalent of FCC Orders:

> During the period beginning on such date of enactment and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

Congress thus made unambiguous its intent to sustain certain aspects of the AT&T Consent Decree in the hands of the FCC, at least until the administrative agency found the public interest to require something else.[4] The line-of-business restrictions along with all other MFJ provisions governing the relationships between the exchange and interexchange activities of the BOCs have thus been preserved *by operation of law* until the FCC rules otherwise.

---

3 In that Order, the Bureau also noted that the definitional provisions of the Act confirm Congress' intent regarding the agency's authority over LATA boundaries, subsection 3(25). This definition does not itself create jurisdiction, but rather merely confirms it.

4 As noted above, SBC's suit did not challenge this provision. In any event, there is no question that the subsection applies to all carriers, not just Bell Operating Companies, and thus falls outside the scope of the court's ruling. See GTE Hawaiian Telephone Co., 11 FCC Rcd 20354 (IB 1996)(terms of GTE decree remain in place until removed by FCC action).

2. The BOCs Must Still Seek Section 214 Approval Before Offering In-Region Interstate or International Long Distance.

Section 214, in relevant part, states that "*[n]o carrier shall* undertake the construction of a new line. . . or shall acquire or operate any line. . . or shall engage in transmission over [such] line" unless the FCC certifies that such action comports with the public convenience and necessity. See 47 U.S.C. § 214(a)(emphasis added).[5] As used in the statute, a "'line' means any channel of communication established by the use of appropriate equipment, other than a channel of communication established by the interconnection of two or more existing channels." Id.

The BOCs currently do not hold Section 214 certificates for the construction or operation of in-region interstate or international lines.[6] Thus, a BOC may not provide in-region interstate or international long distance service until it has received Section 214 authorization for in-region interstate and

---

5 Section 402(b)(2)(A) of the Telecommunications Act of 1996 (to be added to Section 214) eliminated Section 214's authorization requirement for "the extension of any line." 47 U.S.C. § 402(b)(2)(A).

6 In 1983, the Commission approved all transfers of facilities and Section 214 and 310(d) authorizations as was necessary to implement the AT&T Consent Decree. See Consolidated Application of AT&T and Specified Bell System Companies, 96 FCC 2d 18 (1983). The BOCs themselves have sought new Section 214 authority since the decree's reorganization and passage of the 1996 Act. See, e.g., Application of Southwestern Bell Communications Services, Inc., ITC File No. 97-777 (filed Dec. 5, 1997)(seeking global 214 authority for international resale "when SBCS is legally permitted to provide such services" under the new Act).

international operation. This is so regardless of whether a BOC proposes to provide the in-region service on a resale or facilities-basis.[7]

Under the FCC's rules, dominant carriers must apply for Section 214 approval before providing a service over a line which is not already covered by a previously granted Section 214 certificate. See 47 C.F.R. § 63.01; Implementation of the Non-Accounting Safeguards of Sections 271 and 272; Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, *Notice of Proposed Rulemaking*, 11 FCC Rcd 18877 at ¶ 109 (1996) ("In-Region NPRM"). Non-dominant domestic interstate common carriers are subject to a blanket grant of the Section 214 application requirement. See 47 C.F.R. § 63.07(a); Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, FCC 84-394, *Fifth Report and Order*, 98 FCC 2d 1191 at ¶¶ 2, 16 (1984) ("Competitive Carrier Fifth Report and Order"). The blanket authority does not apply to international service, although the FCC has eliminated the Section 214 pre-approval requirement for the addition, modification or deletion of

---

7 See In the Matter of Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services Facilities, FCC 77-34, *Memorandum Opinion and Order*, 62 FCC 2d 588, 594 at ¶ 108 (1977) ("In summary, we have found that the resale of communications service, which is a common carrier activity within the scope of Title II of the Communications Act, will be regulated in basically the same manner as other common carriage. Applicants for entry to or departure from a market will be required to obtain [Section 214] certification . . .").

circuits for most international carriers. See Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118 at ¶¶ 77, 80-81 (rel. Mar. 13, 1996).

The Commission has long held that "interstate services provided directly by exchange telephone companies (not through affiliates) are regulated as dominant." Competitive Carrier Fifth Report and Order at ¶ 9. Indeed, prior to the passage of the 1996 Act, the FCC held that, if the line of business restrictions contained in the MFJ were removed, it "would regulate the BOCs' interstate, interLATA services as dominant until [it] determined what degree of separation, if any, would be necessary for the BOCs or their affiliates to qualify for nondominant regulation." Id. at ¶ 9 n.23; see In-Region NPRM at ¶ 112.[8]

After the passage of the 1996 Act, the FCC conducted a proceeding to determine whether BOCs providing in-region interLATA service pursuant to an approved Section 271 application should be treated as dominant or non-dominant long distance providers. See In-Region NPRM. In its Notice of Proposed Rulemaking, the Commission stated that its rules require that a BOC *affiliate* providing in-region long distance be treated as dominant unless the FCC specifically determines that the

---

[8] The FCC has regulated BOC provision of in-region, interstate intraLATA service as a dominant offering. See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, *Fourth Report and Order*, 95 FCC 2d 554 at ¶ 5 n.6 (1983).

affiliate (or class of affiliates, such as those in compliance with Section 272) should be treated as non-dominant. See In-Region NPRM at ¶ 130. In a subsequent order in that proceeding, the Commission concluded that "the BOCs currently possess market power in the provision of local exchange and exchange access services in their respective regions." See Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, CC Dkt. No. 96-149, *Second Report and Order* at ¶ 100 (rel. Apr. 18, 1997). The Commission further concluded that, absent adequate safeguards, the BOCs could leverage their local monopolies by engaging in unlawful cross-subsidy, discrimination and price squeezes. See id. at ¶ 103 (cross-subsidy); ¶ 111 (discrimination); ¶ 125 (price squeezes). In each case, however, the Commission determined that the requirements of Section 272 and the Commission's regulations (especially its accounting and non-accounting safeguards) provided adequate protection against successful BOC anticompetitive activity. See id. at ¶¶ 104-106, 108 (cross-subsidy); ¶¶ 112-119 (discrimination); ¶¶ 126, 128 (price squeezes).

Based on this analysis, the Commission decided to treat BOC in-region interLATA affiliates as non-dominant. But it emphasized that such regulatory classification applied *only* if the BOC provided service through an affiliate in compliance with the requirements of Section 272 and the Commission's non-accounting and accounting safeguards. As the Commission explained,

> We therefore see no reason to impose dominant carrier regulation on the BOC interLATA affiliates, given that section 272 contains numerous safeguards designed to prevent the BOCs from engaging in improper cost allocation, discrimination, and other anticompetitive conduct. We emphasize that our decision to accord non-dominant treatment to the BOCs' provision of in-region, interLATA services is predicated upon their full compliance with the structural, transactional, and nondiscrimination requirements of section 272 and our implementing rules.[9]

Id. at ¶ 134.

If the court's decision vacating Section 272 in SBC v. FCC is not stayed and ultimately reversed, the predicate for the Commission's non-dominant treatment of BOC in-region long distance service will be removed. In the first instance, there will be no Section 272 "affiliate" since the lawsuit has disabled the separate subsidiary structure crafted by Congress.[10] Second, the Commission has already determined implicitly that, absent Section 272 statutory safeguards, it is obligated as a matter of rational decisionmaking to treat the BOCs (or their affiliates) as dominant providers of in-region interstate and international long distance service. Under these rules and the statute, the

---

9 This passage refers to the Commission's review of BOC provision of domestic in-region interLATA service. The FCC reached the same conclusion with regard to BOC provision of international in-region service. See id. at ¶ 138. Of course factors other than the application of Section 272 safeguards, such as affiliation with foreign carriers with control over bottleneck facilities, influence the FCC's treatment of a carrier's particular international service as dominant or non-dominant. See id. at ¶ 139.

10 For this reason, any voluntary offer by a BOC to use a separate subsidiary would be inconsequential: the utility of the safeguard requires the force of law and the threat of penalty for non-compliance.

BOCs (or their affiliates) must apply for Section 214 approval as dominant carriers before they may provide in-region interLATA interstate or international long distance. Section 214 proceedings would be a necessary vehicle for determining whether the FCC should exercise its authority to allow entry and to appropriately condition any possible grant. As explained below, there is no question that the FCC has such authority under Section 214.

3. The FCC Has Broad Authority under Section 214 to Consider the Competitive Consequences of Entry and May Impose Conditions on Entry Accordingly.

The Commission has used Section 214 as its primary tool to control market entry and exit[11] by considering whether the "present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line. . . ." 47 U.S.C. § 214(a). This public interest inquiry under Section 214 is broad-based, and enables the Commission to take into account a number of factors including the procompetitive and anticompetitive consequences of a particular application. In so

---

11 See MCI Telecommunications Corp. v. FCC, 561 F.2d 365, 375 (3rd Cir. 1976) (Section 214 functions as the FCC's "regulatory charter over entry into the common carrier communications field"); In the Matter of Application of General Telephone & Electronics Corp. to Acquire Control of Telenet Corporation and its wholly-owned subsidiary, Telenet Communications Corp., FCC 79-261, *Memorandum Opinion and Order*, 72 FCC 2d 91, 92 (rel. June 4, 1979) ("Section 214 provides the basic framework within which this Commission controls market entry and exit and imposes conditions upon the use of common carrier facilities in exercise of our broad statutory mandate . . . .") ("GTE/Telenet").

doing, the Commission may deny an application, or alternatively may grant 214 authority and attach conditions in order to ensure that the applicant carries out its authority in accordance with that public interest standard. Thus, in response to a BOC application to provide in-region long distance, the FCC can and should condition approval -- as it has in analogous situations in the past -- on the applicant's compliance with requirements designed to limit the anticompetitive consequences of the proposed market entry.

a. The FCC may consider the anticompetitive aspects of a particular application in making its Section 214 public interest determination.

In determining whether approval of a Section 214 application comports with the public interest, the FCC may consider the anticompetitive consequences of granting the application. For example, in response to growing interest among telephone companies in providing community antenna television ("CATV") service, the FCC relied on Section 214 to promulgate regulations which established the conditions under which telephone companies would be permitted to offer CATV service in-region. See In the Matter of Applications of Telephone Companies for Section 214 Certificates for Channel Facilities Furnished to Affiliated Community Antenna Television Systems, FCC 70-115, *Final Report and Order*, 21 FCC 2d 307 (adopted Jan. 28, 1970) ("FCC CATV Order"). Though the FCC generally acknowledged the competitive benefits of increasing the number of CATV providers, it also recognized that the telephone companies had the incentive and the opportunity to harm competition in the provision of broadband services. Specifically, the FCC found that LECs could provide access to poles and conduits essential to competing CATV providers on less advantageous terms than the telcos offered their own CATV affiliates.[12] As the FCC explained, the potential for such anticompetitive behavior must be considered in a Section 214 proceeding:

> Since the standard of public convenience and necessity is the watchword of any section 214 grant, there should be no question about our responsibility to make it certain that any authorization issued by us will not be used as a tool of discrimination and unfair competition, and will not inhibit the future growth and development of the wide-spectrum services. On the contrary, our authorizations should assure that the common carrier applicant's service is offered in a manner consistent with the best interest of the community it serves.

Id. at ¶ 56.[13]

---

12 The FCC noted that "[t]he entry by a telephone company, directly or through an affiliate, into the retailing aspects of CATV services in the community within which it furnished communications services can lead to undesirable consequences. This is due to the monopoly position of the telephone company in the community, as a result of which it has effective control of the pole lines (or conduit space) required for the construction and operation of CATV systems. Hence, the telephone company is in an effective position to preempt the market for this service which, at present, is essentially a monopoly service in most population centers. It can accomplish this by favoring its own or affiliated interest as against nonaffiliated interests in providing access to those pole lines or conduits." Id. at ¶ 46.

13 The Commission further stated as follows

> It is not open to question that antitrust policies and the public interest standard of the Communications Act are closely related, and that we are obliged to give weight to that policy in applying the [Section 214] statutory standard.

FCC CATV Order at ¶ 57.

On appeal, the Fifth Circuit described the scope of the FCC's Section 214 authority as follows:

> [I]t is settled that practices which present realistic dangers of competitive restraint are a proper consideration for the Commission in determining the 'public interest, convenience, and necessity,' and the elimination of this danger is consistent with the Commission's broad duties under the Communications Act.

General Telephone Company of the Southwest, et al. v. United States of America and FCC, 449 F.2d 846, 856 (5th Cir. 1971) (citations omitted) ("GTE of the Southwest"). The Court agreed with the FCC's approach, stating that "[w]e feel that the public interest standard of Section 214[(c)] is sufficiently broad to permit the Commission to issue these rules." Id. at 856 (quoting FCC v. RCA Communications, Inc., 346 U.S. 86, 94 (1953)).

In a separate proceeding, the FCC further clarified its interpretation of Section 214 when it reviewed GTE's proposed acquisition of Telenet, a previously authorized Section 214 reseller of data communications services. See, e.g., GTE/Telenet, supra, 74 FCC 2d 91. The FCC explained its approach to Section 214 review:

> In the course of our review of the [GTE] application, we would evaluate the competitive and other public interest aspects of GTE's entry into the resale market and impose such terms and conditions as were required by the public convenience and necessity, consistent with the provisions of § 214(e) [sic] and with our stated intent to carefully scrutinize resale by monopoly carriers and to prevent cross-subsidization.

GTE/Telenet at 96 (emphasis added).[14]

---

[14] The FCC first explained its intention to carefully scrutinize monopoly carriers who intend to provide competitive services in its Resale and Shared Use proceeding. See In the Matter of Regulatory Policies

As these cases demonstrate, the FCC and the courts have long understood the Section 214 public interest standard to permit, even to obligate, the FCC to consider the possible effect an applicant's entry may have on the market it seeks to enter. It follows that the FCC must consider such issues in reviewing a BOC's Section 214 application for in-region long distance.

b. The FCC has the authority to attach conditions to approval of Section 214 applications.

Section 214(c) expressly provides that the FCC may attach conditions to any grant of authority consistent with its public interest findings. See 47 U.S.C. § 214 (c) (authorizing the Commission to "attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require"). The FCC has not hesitated in doing so. See Bell Atlantic-NYNEX, File No. NSD-L-96-10 (rel. Aug. 14, 1997); Atlantic Tele-Network, Inc., FCC 93-342, *Order on Review*, 8 FCC Rcd. 4776 (rel. July 14, 1993). Moreover, the courts have affirmed the FCC's broad discretion to place appropriate conditions on approval of Section 214 applications.[15]

Concerning Resale and Shared Use of Common Carrier Services and Facilities, FCC 77-34, *Memorandum Opinion and Order*, 62 FCC 2d 588, 594 (rel. Jan. 12, 1977).

15 See, e.g., Atlantic Tele-Network, Inc. v. FCC et al., 59 F.3d 1384 (D.C. Cir. 1995) (affirming the FCC's imposition of a 'proportionate return' condition upon a Section 214 applicant); GTE Service Corp. v. FCC et al., 782 F.2d 263 (D.C. Cir. 1986) (affirming the FCC's decision to place four conditions on the transfer of Section 214 certificates as part of AT&T's post-divestiture reorganization).

In Atlantic Tele-Network v. FCC, for example, the D.C. Circuit reviewed the FCC's conditional grant of a Section 214 application filed by Atlantic Tele-Network ("ATN"). Atlantic Tele-Network, Inc. v. FCC et al., 59 F.3d 1384 (D.C. Cir. 1995). At the time, ATN held an 80% interest in Guyana Telephone and Telegraph Company, Ltd., the monopoly local telephone company in Guyana. The FCC had conducted its Section 214 public interest analysis, and in so doing, determined that ATN had the incentive and opportunity to use GT&T's bottleneck to discriminate against other providers of service to Guyana. The FCC had therefore conditioned its Section 214 authorization on ATN permitting traffic to flow to and from Guyana in compliance with the FCC's 'proportionate return' policy.[16] The D.C. Circuit held that the Commission had acted well within its authority under Section 214(c) to attach a condition to its Section 214 grant. Atlantic Tele-Network, Inc. v. FCC et al., 59 F.3d 1384, 1388 (D.C. Cir. 1995). The Court stated that the FCC "balanced competing interests in furtherance of its estimate of the public convenience and necessity; and it did so with sufficient clarity . . . ." Id. at 1389. Accordingly, the Court upheld the FCC's order.

In the CATV proceeding, see supra n.10 and accompanying discussion, the FCC adopted a blanket prohibition on telephone

---

16 This policy specifies that an "entity carrying traffic into a country receives out-bound traffic from that country in the same proportion as it handled the inbound traffic." Regulation of International Accounting Rates, *Second Report and Order*, 7 FCC Rcd. 8040, 8045-46 (1987).

companies offering CATV service in the same region in which they provide service. However, the FCC provided an exception for "those rural communities, and communities of low population density where CATV service demonstrably could not exist" unless the incumbent telephone company provided the service. The FCC permitted telephone companies to provide CATV service in those areas subject to appropriate accounting safeguards. Cable/Telco Order at ¶ 51. On a going-forward basis, the Commission further imposed an additional condition designed to limit the LECs' ability to leverage their control over the poles and conduits:

> [A]uthority to a telephone company under section 214(a) of the act to provide CATV channel facilities, should be conditioned upon a documented showing that the [competing] CATV system had available, at its option, pole attachment rights (or conduit space, as the case may be) (a) at reasonable charges, and (b) without undue restrictions on the uses that may be made of the channel by the customer.

On appeal, the Fifth Circuit upheld these conditions as a proper exercise of the FCC's authority under Section 214. See GTE of the Southwest.

In sum, the language of Section 214(c) as well as FCC and court decisions confirm that the FCC has the authority to establish preconditions on approval of Section 214 applications. Indeed, the FCC has imposed conditions in contexts very similar to BOC in-region entry.

4. Conclusions under Section 214.

The Commission's rules require that a BOC or its affiliate be treated as a dominant provider of long distance service unless the Commission specifically determines that adequate safeguards exist to protect against the BOC's abuse of its market power in the local market. The Commission has made such a finding, but it assumed the validity of Section 272. In the absence of enforceable Section 272 obligations, the BOCs and their affiliates must again be treated as dominant providers of long distance under the FCC's rules. As dominant carriers, the BOCs are obligated to apply for Section 214 approval before entering the in-region interstate markets.

In reviewing such applications, the Commission has the authority and the obligation to consider the consequences of BOC in-region entry for the long distance market. Section 214 also grants the FCC the authority to establish preconditions on approval, such as compliance with Sections 251 and 252 and with Section 272-like safeguards, designed to diminish the harm to the long distance market that Congress feared BOC in-region entry would cause absent such conditions.

*　　*　　*　　*　　*

In enacting the Telecommunications Act of 1996, Congress set forth as national policy a rational scheme for opening up local monopoly markets to competition and thereafter permitting BOC entry into long distance. The mistaken ruling by the district court has put at risk Congress' will. These legislative concerns for anticompetitive and anti-consumer BOC misconduct cannot be ignored by the FCC. Indeed, the agency is expressly tasked with the responsibility to act on such concerns regardless of whether or not Sections 271 through 275 are sustained. Section 251(g) indeed ensures that the void which SBC has tried to contrive does not exist in fact or law. Until local competition develops, the Commission, the BOCs, and the public will be returned by operation of law to the pre-1996 environment of traditional entry regulation. See Section 10(d)(forbidding the FCC from forbearing under either Section 251(c) or 271 "until it determines that those requirements have been fully implemented"). 47 U.S.C. § 160(d).

It should also be emphasized that the same concerns that underlie Section 214 most likely have state counterparts in each BOC state. Thus, it may well be that specific Bell Companies do not yet have state authorization to commence in-region, intrastate, interLATA services, or that any such authority they were once issued must be reconsidered and reformed by the respective PSC to reflect changed circumstances, that is, SBC's betrayal of the consumer and competitive safeguards contained within Sections 271 through 275 of the Act.

January 5, 1998